

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ERNEST J. GLYNN, <i>et al.</i>)	
)	
Plaintiffs,)	
)	CIVIL ACTION NO. 19-cv-00176-NT
v.)	
)	
MAINE OXY-ACETYLENE SUPPLY)	
COMPANY, ET AL.,)	
)	
Defendants.)	
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MARTIN J. WALSH, Secretary of Labor,)	
United States Department of Labor,)	
)	
Plaintiff,)	
)	CIVIL ACTION NO. 20-cv-00326-NT
v.)	
)	
MAINE OXY-ACETYLENE SUPPLY)	
COMPANY, DANIEL GUERIN,)	
BRYAN GENTRY, AND CARL PAINE)	
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SECRETARY’S RESPONSE TO DEFENDANTS’ MOTION TO CONSOLIDATE

Following a March 2, 2022 conference of counsel in the *Glynn* class action, in which the Secretary did not participate, Defendants filed a motion to consolidate for trial the above-captioned actions. While the Secretary does not disagree with the legal standard for consolidation as cited by Defendants in their motion (Dkt. 91 at 2), the Secretary files this response to clarify his role in this litigation.¹

In filing his lawsuit, the Secretary acted on behalf of the Employee Benefits Security

¹ Although Defendants’ Motion is speckled with extraneous speculation about the Secretary’s litigation strategy and comments on the merits of the case (Dkt. 91 at 3-4), the Secretary will not address them here. The Secretary also notes that the motion states that the Secretary participated jointly in all depositions. (*Id.* at 2). At least two depositions, however, were taken in *Glynn* before the cases were consolidated for discovery.

Administration, a law enforcement agency with the responsibility to enforce the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §1001, *et seq.* The Secretary is not in the same position as the *Glynn* class plaintiffs, who have brought a class action to enforce private rights. *See, e.g., Secretary of Labor v. Fitzsimmons*, 805 F.2d 682, 692-93 (7th Cir. 1986)(discussing differences between role of Secretary and private litigants in ERISA litigation: “the government’s interest in bringing an ERISA action is to enforce fiduciary standards and ensure the financial stability of billions of dollars of assets”). Additionally, while the Secretary named the Maine Oxy-Acetylene Supply Company Employee Stock Ownership Plan Trustee Carl Paine as a defendant, the *Glynn* class has not. Further, the Secretary seeks different ERISA remedies from Defendants such as injunctive relief, as well as make-whole monetary relief.

Nevertheless, in the interest of efficiently litigating these related matters, the Secretary does not object to consolidation, provided that a clear process fully recognizing the Secretary’s different role, claims, and named defendants in the two matters are adequately addressed in a pre-trial Court order governing the litigation.

Respectfully submitted,

Secretary of Labor

By his attorneys,

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Date: March 29, 2022

CERTIFICATE OF SERVICE

I certify that on March 29, 2022, the foregoing Secretary's Response to Defendants' Motion to Consolidate was electronically filed with the U.S. District Court. Notice will automatically be electronically mailed to the following individuals who are registered with the U.S. District Court CM/ECF System:

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